

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.606 OF 2023
WITH
INTERIM APPLICATION NO. 13977 OF 2023

Ankush Sakharam Amle and Others ...Appellants

Versus

Bhima Ganpat Mandlik and Others ...Respondents

...

Mr. Chaitanya B. Nikte, for Appellants.

Mr. Hemant Ghadigaonkar for Respondent Nos.1 & 2.

Mr. A.R. Patil, Addl. G.P. for Respondent Nos.3 & 4.

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CORAM : SANDEEP V. MARNE, J.

DATE : SEPTEMBER 06, 2023.

JUDGMENT :

1. Admit. With the consent of the learned counsels for the parties, the appeal is taken up for final hearing.

2. By this Appeal, Appellants challenge order dated 17 January 2022 passed by District Judge -2 Rajgurunagar, Khed, allowing application of Plaintiffs at Exhibit-10 thereby temporarily restraining the present Appellants (Defendants) from making any further construction of shed in the alluvial land situated towards northern side of land bearing Gat Nos.54, 55 & 56, Village

Dingore, Taluka Junner, District, Pune during pendency of Plaintiff's Appeal.

3. Plaintiffs/Respondents Nos.1 & 2 claim to be the owners and occupiers of land bearing Gat Nos. 54, 55 & 56. It is plaintiffs' case that River Pushpawati flows adjacent to their land and alluvial land is formed on the bank of Pushpawati river. That under the provisions of Maharashtra Land Revenue Code 1966, (for short '*Code*') the adjacent land holder becomes owner of the alluvial land and therefore Plaintiffs are owners and possessors of the said alluvial land. Plaintiffs had instituted Special Civil Suit No.923 of 2006 before Civil Judge, Senior Division, Pune alleging that Appellants/Defendants were disturbing Plaintiff's possession of alluvial land. Plaintiffs therefore prayed for injunction as well as declaration of ownership of alluvial land. By Judgment and decree dated 30 August 2010, the trial Court dismissed Special Civil Suit No.923 of 2006. Plaintiffs filed Civil Appeal No.51 of 2011 challenging the decree dated 30 August, 2010. By order dated 15 March 2016, the Appellate Court allowed the appeal and while setting aside the Judgment and Decree dated 30 August 2010, the suit was remanded for retrial. After retrial, the Civil Judge Senior Division once again dismissed Plaintiffs' Suit by Judgment and order dated 17 April 2019.

4. Plaintiffs have instituted Regular Civil Appeal No.44 of 2019

before District Court. In the pending Appeal, Plaintiffs filed Application dated 22 November 2021 to restrain Defendants from carrying out any construction in the alluvial land abutting Gat No.54,55, & 56. By ad-interim order dated 22 November 2021, the District Court restrained the Appellants from going ahead with the construction work till further orders. The application of the Plaintiffs was later allowed by the District Court by order dated 17 January 2022 restraining Defendants from making any construction of shed in the alluvial land situated towards northern side of land bearing Gat Nos.54, 55 & 56 during pendency of the Appeal. Appellants are aggrieved by the order of the District Court and have accordingly filed the present Appeal.

5. Mr. Nikte, the learned counsel for Appellants would contend that the Appellants represent the local villagers, who have been using the alluvial land for performing Dashkriya Vidhi (10th day ritual) for last several decades. That construction of shed has been undertaken as a facility to villagers performing such rituals. He would submit that the alluvial land vests in the State Government and therefore the suit of the Plaintiffs is totally unfounded. He would invite my attention to the provisions of Section 32 & 33 of the Code, in support of his contention that the Plaintiffs did not make out any prima facie case for use or temporary use of the alluvial land. That, there was

no injunction in favour of Plaintiffs during pendency of the suit or earlier appeal or even in the present appeal. That therefore the District Court erred in allowing application at Exhibit – 10 filed by the Plaintiffs.

6. Per contra Mr. Ghadigaonkar, the learned Counsel appearing for Respondent Nos.1 & 2/Plaintiffs would oppose the Appeal and support the orders passed by the first Appellate Court. He would submit that the alluvial land has been found adjacent to Plaintiffs' land and that therefore they are entitled to use the same. That the Appellants have absolutely no right title or interest in the said alluvial land and are attempting to take possession of the same from Plaintiffs. He would further submit that under Section 33 of the Code, it is only Plaintiffs, who are entitled to use the alluvial land and that therefore the first Appellate Court has rightly granted temporary injunction in favour of Plaintiffs. That the area of the alluvial land is less than one acre and therefore Plaintiffs have right to use the same to the exclusion of Plaintiffs. He would pray for dismissal of the Appeal.

7. Rival contentions of the parties now fall for my consideration.

8. Perusal of the plaint filed by Plaintiffs would indicate that they have claimed themselves to be the owners of the alluvial land. Such ownership

right is claimed vaguely by referring to the provisions of the Code. Plaintiffs have also sought a declaration they are owners of the alluvial land. It would therefore be necessary to refer to the relevant provisions of the Code relating to alluvial land. Sections 32 & 33 of the Code reads thus :

“ **32.** (1) When it appears to the Collector that any alluvial land, which vests under any law for the time being in force in the State Government, may with due regard to the interests of the public revenue be disposed of, he shall, subject to the rules made by the State Government in this behalf, offer the same to the occupant (if any) of the bank or shore on which such alluvial land has formed. The price of the land so offered shall not exceed three times the annual assessment thereof.

(2) If the occupant does not accept the offer, the Collector may dispose of the land without any restrictions as to price.”

33. When alluvial land forms on any bank or shore, the occupant, if any, of such bank or shore shall be entitled to the temporary use thereof unless or until the area of the same exceeds one acre. When the area of the alluvial land exceeds one acre, it shall be at the disposal of the Collector subject to the provisions of section 32.”

9. The statutory scheme is such that the alluvial land vests in the State Government. If the alluvial land exceeds area of one acre, the Collector is empowered to dispose of the same by offering it to the occupant of the bank or shore at which the alluvial land is formed. The disposal to the occupant of the bank or shore is subject to the price not exceeding three times the annual assessment. If such an occupant does not accept the offer, the Collector can dispose of the alluvial land to any person without any restriction as to price.

10. Section 33 of the Code is applies to alluvial land, area of which does not exceed one acre. In respect of such alluvial land area of which is less than one acre, the occupant on its bank or shore is entitled to temporary use thereof.

11. Having examined the statutory framework relating to use of alluvial land, it would be necessary now to consider Plaintiffs' claim of ownership or occupation of the alluvial land. The Appellate Court has arrived at a conclusion that the area of alluvial land is less than one acre. Therefore, provisions of Section 33 of the Code would apply to the alluvial land in question. Under Section 33, Plaintiffs in their capacity as owners of the land on the shore, can at the highest claim temporary use of the alluvial land. As against this, plaintiffs have claimed ownership in the said alluvial land. Considering the provisions of Sections 32 & 33 of the Code, claim of Plaintiffs to ownership of the alluvial land *prima facie* appears to be misplaced.

12. Coming to the right of the plaintiffs to temporary use of the alluvial land, it is not their case in the plaint that they are entitled to temporary use the alluvial land. On the contrary it is plaintiffs' assertion in the plaint that they are owners of the said alluvial land.

13. There appears to be some degree of debate as to who has been using the alluvial land. It is Appellants case that the local villagers have been using the said alluvial land for 10th day rituals (Dashkriya Vidhi) for several years. Plaintiffs have not made out any specific case that they are entitled to temporary use of the alluvial land under Section 33 of the Code. Even if such a case was to be pleaded, the use of alluvial land by Plaintiffs could only be temporary. By no stretch of imagination, Plaintiffs can ever claim right to permanent use or ownership in the alluvial land. However the frame of suit by Plaintiffs *prima facie* appear to be faulty. Far from claiming a temporary use of the alluvial land, they have claimed ownership therein, which statutorily vests in the State Government.

14. In that view of the matter, no case was made out by Plaintiffs to seek any injunction against the Appellants. Whether the shed sought to be constructed by local villagers would be authorized or not is an altogether different aspect. The vital issue is whether Plaintiffs have any right in the alluvial land and whether they have been able to establish such a right in the suit. Plaintiffs' pleadings in the suit about right to temporary use of the alluvial land are absent. They have already lost twice in the suit and are without injunction for the last 17 long years. In such circumstances there was

no occasion for the Appellate Court to entertain Plaintiffs' application at Exhibit – 10. In my view therefore the Appellate Court has erred in granting temporary injunction in favour of the Plaintiffs/Respondent Nos.1 & 2 by passing the impugned order dated 17 January 2022. The alluvial land is in the ownership of the State Government, who exactly would be entitled to use the same is something which the Appellate Court would decide while deciding the appeal finally. After 17 years of filing of the suit, the Appellate Court could not have granted temporary injunction in Plaintiff's favour.

15. The order dated 17 January 2022 passed by the District Court is thus unsustainable. The appeal is thus allowed and the order dated 17 January, 2022 passed on Application at Exhibit-10 by the District Judge – 2 Rajgurunagar, Khed is set aside. The Appellate Court shall however not be influenced by observations made in this judgment and shall decide the appeal on its own merits. There shall be no order as to costs.

16. In view of disposal of Appeal from Order, Interim Application No.13977 of 2023 stands disposed of.

(SANDEEP V. MARNE, J.)